IN THE HIGH COURT OR UTTARANCHAL AT NAINITAL

Writ Petition (S/S) No. 4035 of 2001
(Old No. 25570 of 1993)

Smt. Anju Singhal
Wife of Vinod Kumar Singhal
Resident of No. 539, Purani Tehsil,
Roorkee, District Haridwar.

..... Petitioner

Versus

1. Sri Sanatan Dharma Prakash Chand Kanya Inter College, Roorkee, District Haridwar through its Manager.
2. Regional Inspectress of Girls School, Region I, Meerut.
3. District Inspector of Schools, Haridwar.

..... Respondents

Sri Rajendra Dobhal, learned counsel for the petitioner.
Sri S.P.S. Panwar, learned Senior Advocate on behalf of respondent No. 1.
Sri Paresh Tripathi, learned Standing counsel for the State/respondent Nos. 2 & 3.

Dated: July 19, 2006.

Hon'ble P.C. Verma, J.

The petitioner was appointed in the year 1992 on the post of Assistant Teacher L.T. Grade in Sanatan Dharma Prakash Chand Kanya Inter College, Roorkee, District – Haridwar. The petitioner's appointment was against the short term vacancy. The short term vacancy was to be filled up according to proviso of Removal of Difficulties (Second) Order which prescribes procedure for appointment of the teachers. It has been stated by the petitioner in the writ petition that the post was advertised and 20 candidates were applied and appeared before the Selection Committee. The selection was held in

accordance with the provisions of the Removal of Difficulties Order and the petitioner was given appointment after approval of the Regional Inspectress of Girls Schools. Appointment of the petitioner was approved on 01.02.1993. Thereafter the vacancy became permanent on 01.7.1993. The vacancy, which was temporary in nature and occupied by the petitioner became permanent. Then the appointment on that post was made by the Secondary Education Service Commission. The petitioner was not permitted to work after the period mentioned in the appointment letter was over. Feeling aggrieved the petitioner filed this writ petition.

2. The Allahabad High Court while admitting the petition on 14.07.1993 passed the following order:-

> "Learned Standing Counsel accept notice on behalf of respondent No.2. He prays for and is allowed a month's time to file counter affidavit. The petitioner will have two weeks thereafter to file the rejoinder affidavit. Petitioner shall take steps within a week to serve the respondent No.1 personally. In addition to the usual mode of service, office shall issue necessary notice made returnable within six weeks.
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> List after the expiry of the aforesaid period.
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> Meanwhile, the petitioner shall be allowed to continue on this post of L.T. grade teacher and shall be paid her salary."

3. Now the petitioner is working in terms of the interim order granted by the High Court till date. Learned counsel for the petitioner submits that since the petitioner has been allowed to continue on the post, therefore he is entitled to be regularized under Section 33(C) of U.P. Secondary Education [Services Selection

Boards] Act, 1982. In State of Uttaranchal, Act No. 4 of 2005 has been enacted. The Act is known as the Uttaranchal Non-Government Education (Amendment and Repeal) Act, 2005. In Section 5 of chapter-2 of the said Act No. 4 of 2005 it has been mentioned that after Section 16 GG of the Principal Act, a new Section 16 GGG (A) has been added which reads as under:-

> **"(16 GGG)(A) Regularisation of appointment against short term vacancies-**
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> (1) Substantive appointment shall be given to such a teacher by the Management, who-
>
> (a) was appointed by promotion or by direct recruitment in the lecturer's grade or trained graduate grade on or after May 14, 1991 but not after August 6, 1993 against short term vacancy in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Services Board (Removal of difficulties) (Second) Order, 1981, as amended from time to time, and such vacancy was subsequently converted into a substantive vacancy;
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> (b) possesses the qualification prescribed under, or is exempted from such qualifications in accordance with, the provisions of the Intermediate Education Act, 1921;
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> (c) has been continuously serving the institution from the date of such appointment unto the date of the commencement of the Act;
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> (d) has been found suitable for appointment in a substantive capacity by the Selection Committee under sub-section (B) of section (16 GGG).
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> (2) (a) The names of the such teachers shall be recommended for substantive appointment in order of seniority as determined from the date of their appointment;

(b) If two or more such teachers are appointed on the same date the teacher who is elder in age shall be recommended first.

(3) Every teacher appointed in a substantive capacity under sub-section (1) shall be deemed to be on probation from the date of such appointment.

(4) A teacher who is not found suitable under sub-section (1) and a teacher who is not eligible to get a substance appointment under said sub-section shall cease to hold the appointment on such date as the State Government may by order specify.

(5) Nothing in this section shall be construed to entitle any teacher to substantive appointment, if on the date of the commencement of the Act referred to in clause (C) of sub-section (1) such vacancy had already been filled or selection for such vacancy has already been made in accordance with the Act."

and application of the Uttar Pradesh Secondary Education Services Selection Board Act, 1982 (Act No. 5 of 1982) has been repealed. It has been provided in sub section (2) of Section 6 of the Act No. 04 of 2005 that notwithstanding such repeal, anything done or any action taken under the Principal Act referred to in sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of the Act as if the provisions of the Act were in force at all material times.

4. In view of clause (a) of sub section (1) of Sec. 16 GGG since the petitioner was appointed after May 14, 1991 and before August 6, 1993 against short term vacancy in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Services Board (Removal of Difficulties) (Second) Order, 1981, as amended from time to time, and such vacancy was subsequently converted

into a substantive vacancy and possesses the requisite qualification prescribed under, or is exempted from such qualifications in accordance with, the provisions of the Intermediate Education Act, 1921, has been continuously serving the institution from the date of such appointment upto the date of commencement of the Act and has been found suitable for appointment in a substantive capacity by the Selection Committee under sub-section (B) of section (16 GGG).

5. Sub section (2) provides the names of such teachers shall be recommended for substantive appointment in order of seniority as determined from the date of their appointment. Therefore, after the enforcement of this Uttaranchal Act No. 04 of 2005, the petitioner is entitled to be regularized.

6. Since the petitioner was appointed after 14th May, 1991 and is continuing on the post of L.T. Grade teacher which vacancy stands converted into permanent one, the petitioner is entitled to be regularized.

7. Sri Paresh Tripathi, learned Standing Counsel for the State of Uttaranchal relied on judgment of **Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur through its Manager and another versus Sree Kumar Tiwary and another,** reported in (1997) 4 Supreme Court Cases, 388. It was also a case of regularization of a teacher appointed under Section 33 (C) of U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981. In the aforesaid case there was a termination order terminating

the service of the respondent in appeal and he challenged the order of termination and obtained the stay order against the termination order and, therefore, he continued to be in service. Here in the present case, there was no termination order but the petitioner was stopped to come on duty on the opening of school. Against that the petitioner went to the High Court and High Court allowed the petitioner to continue in service. It appears that the interim mandamus was granted for the reason that once appointment is made by the appointment order, the termination is to be made by an order terminating the service. Appointment made by an appointment order cannot be terminated orally.

8. Learned Standing Counsel submitted that it is evident from the order of appointment of the petitioner that she was appointed from 10.08.1992 to 14.05.1993. It was the period during which the substantive incumbent was on leave. It is noteworthy that the substantive incumbent resigned from service on 23.03.1993. Therefore, the continuance of the petitioner after 23.03.1993 was by written order but the resignation was accepted on 1st July, 1993. Therefore, the permanent vacancy accrued on 1st July, 1993 and a fresh exercise was to be taken by the Management for making ad-hoc appointment under Section 18 of the U.P. Secondary Education [Services Selection Boards] Act, 1982. What weighed to the Court to issue a mandamus is that one ad hoc appointee cannot be removed by another ad hoc appointee and therefore, directed the respondents to allow the petitioner to continue.

9. Thus, this case is clearly distinguishable from the facts of the case *Committee of Management, Arya Nagar Inter College* case (supra).

10. Therefore, the respondents are directed to consider the case of the petitioner for regularization under Section 16 GGG of the Uttaranchal Non-government Education (Amendment and Repeal) Act, 2005 (Uttaranchal Act No. 04 of 2005) within a period of one month from the date of receipt of certified copy of this order.

11. The petition is disposed of accordingly.

(P.C. Verma, J.)
19.07.2006

P.Singh